

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES "JIM" TOMASIK, J. DANIEL TOMASIK,	§	
and LIBERTARIAN PARTY OF TENNESSEE,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	No. 3:13-cv-01118
	§	Judge Haynes
MARK GOINS, Coordinator of elections for the	§	
State of Tennessee; TRE HARGETT, Secretary of	§	
State for the State of Tennessee; SHELBY	§	
COUNTY ELECTION COMMISSION through its	§	
Members, Robert D. Meyers, Chairman; Norma	§	
Lester, Secretary; Dee Nollner, Commissioner; Steve	§	
Stamson, Commissioner, and Anthony Tate,	§	
Commissioner,	§	
	§	
Defendants.	§	

**RESPONSE OF SHELBY COUNTY ELECTION COMMISSION TO
MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW the Shelby County Election Commission and Election Commissioners and in response to the Plaintiffs' Motion for Preliminary Injunction would show to the Court as follows:

1. The Shelby County Election Commission ("SCEC") is a county election commission organized under the laws of the State of Tennessee, T.C.A. § 2-12-101, *et seq.*
2. Robert Meyers, Norma Lester, Dee Nollner, Steve Stampson and Anthony Tate are the duly appointed and acting Commissioners of the Shelby County Election Commission ("Election Commissioners").

3. Election commissions are ministerial bodies. Election commissions do not have the power or authority to investigate the validity of the laws under which matters are submitted to the election commission to be placed on the ballot. City of Memphis v. Shelby County Election Commission, 146 SW 3d 531 (Tenn 2004).

4. On August 13, 2013, the Governor of Tennessee called a special election for State House District 91, which is entirely situated within Shelby County, to be held on November 21, 2013.

5. On August 29, 2013, James Tomasik submitted his petition to be placed on the ballot. A copy of said petition is attached as **Exhibit A**.

6. T.C.A. §§ 2-1-104, 2-5-208, 2-13-107, 2-13-201 and 2-14-202 require the placement of James Tomasik's name on the ballot as an independent candidate.

7. On September 4, 2013, at a Special Meeting, the SCEC certified Mr. Tomasik as an independent candidate for the special election in House District 91.

8. Also scheduled on November 21, 2013 is a referendum for the City of Memphis seeking an increase in the local portion of the sales tax. All thirty-three of the precincts in House District 91 are within the boundaries of the City of Memphis.

9. Early voting for the November 21st election will commence on November 1, 2013. From November 1st through November 9, 2013, early voting will be conducted only at the main office of the SCEC. Two voting machines will be available at that location.

10. Beginning November 12th and continuing through November 16, 2013 early voting will be available at sixteen locations throughout the City of Memphis. Any voter from District 91 may vote at any of the early voting sites anywhere in the City of Memphis and cast a ballot in District 91.

11. Defendants SCEC and Election Commissioners do not have the authority to consent to a change in the format of the ballot and, to that extent, request that Plaintiffs' Motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 31, 2013 the foregoing document was served on

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through the CM/ECF system if they are registered users or, if they are not, by means of electronic mail to their email address of record.

/s/ John L. Ryder
John L. Ryder